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Testimony of Houston Putnam Lowry

In OPPOSITION to

HB-6436
AN ACT CONCERNING AN ARBITRATION PROCESS FOR SURPRISE BILLS AND BILLS FOR EMERGENCY SERVICES

Insurance & Real Estate Committee
February 2, 2017

I am a Connecticut attorney who practices commercial law generally. I do a lot of arbitration work involving commercial matters and commercial parties.

Frankly, I don't understand the need for this bill. It does not offer a solution to a problem. Why should the court system be precluded from hearing a case about "emergency services"? What are "emergency services"? What is a "surprise" bill anyway? Presumably, a court would reach the same conclusion an arbitrator would reach. Why should people be forced to use arbitration if they prefer to go to the courts? Smaller matters might be more efficiently handled by raising the small claims limit (which is currently being proposed in HB-6648).

Arbitration is a consensual process created by the parties' contract. The parties can contract before or after a dispute arises to resolve it by arbitration.

The parties are freely able to design their own arbitration process. What is good for one dispute might not be good for another dispute. Sometimes it is appropriate to have three arbitrators instead of one. Sometimes an arbitration should be done without a hearing "on the documents." Other cases require a hearing. Arbitrators often defer to small claims courts for small matters because it costs the parties less (the parties have to pay for the arbitrator but not the judge). There is no reason for the General Assembly to set standards for arbitrations. The parties should decide.

Not only is this unwise, it might well be pre-empted by the Federal Arbitration Act (9 USC Chapter 1).

Therefore, I would urge you to ***NOT*** adopt this bill.